U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 24 January 2007

CASE NO.: 2006-LHC-01486

OWCP NO.: 5-117176

In the matter of

R.S.,
Claimant,

v.

VIRGINIA INTERNATIONAL TERMINALS, INC./
SIGNAL MUTUAL INDEMNITY ASSN. LTD. c/o
ABERCROMBIE, SIMMONS & GILLETTE,
Employer/Carrier,

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Party-in-Interest.

Appearances:

Gregory Camden, Esq.
For Claimant

John Barrett, Esq.
For Employer

Before:

Kenneth A. Krantz
Administrative Law Judge

DECISION AND ORDER

This proceeding arose upon the filing of a claim for disability compensation under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §§ 901-950 (2000) ("Act" or "LHWCA"). A formal hearing was held October 5, 2006, in Newport News, Virginia.

Claimant submitted Exhibits 1 through 20, Employer submitted Exhibits 1 through 17, Claimant and Employer jointly submitted Exhibit 1, and Judge Krantz submitted Exhibits 1 through 4.[1] All exhibits were received into evidence without objection. Both parties timely filed post-hearing briefs. The findings and conclusions which follow are based on a complete review of the entire record in light of the argument of the parties, applicable statutory provisions, regulations, and pertinent precedent.

ISSUES

1. Whether Claimant is entitled to temporary partial disability benefits from August 3, 2005, to April 10, 2006.

2. Whether Claimant's back injury is a compensable consequence of his left knee injury, entitling Claimant to an award of temporary total disability benefits from April 11, 2006, to the present and continuing.

STIPULATIONS

1. That an employer/employee relationship existed at all relevant times;

2. That the parties are subject to the jurisdiction of the Longshore & Harbor Workers' Compensation Act;

3. That the claimant sustained an injury arising out of and in the course of employment to his left knee having occurred on 09/02/03;

4. That a timely notice of injury was given by the employee to the employer;

5. That a timely claim for compensation was filed by the employee;

6. That the employer filed a timely First Report of Injury with the Department of Labor and a timely Notice of Controversion;

7. That the claimant's average weekly wage at the time of his injury was $1,7642.02 resulting in compensation payments at the maximum compensation rate of $996.54;

8. That the claimant has been paid benefits under the Longshore & Harbor Workers' Compensation Act as documented on the […] LS-208 dated May 5, 2006.

JX 1. The parties further stipulated and agreed on the record to the following:

[1] The following abbreviations will be used as citations to the record:
CX – Claimant's Exhibit
EX – Employer's Exhibit
JX – Joint Claimant/Employer Exhibit
ALJX – Administrative Law Judge's Exhibit
Tr. – Transcript of October 5, 2006 hearing

9. If Claimant is awarded temporary partial disability benefits from August 3, 2005, to April 10, 2006, Claimant had a wage-earning capacity of $1,057.41, which would entitle him to temporary partial disability benefits at a rate of $471.07;

10. If Claimant's back condition is found to be a compensable consequence of his left knee injury, Claimant is entitled to an award of temporary total disability benefits from April 11, 2006, to the present and continuing;

11. If Claimant's back condition is found not to be a compensable condition, Employer has adequately demonstrated a residual wage-earning capacity based on the submitted Labor Market Survey, found at EX 16;

12. Claimant was paid temporary total disability benefits in full while he was out of work post-surgery from March 23, 2004, to August 2, 2005; thus, entry of an award reflecting that those benefits were properly paid is appropriate.

Tr at 5-7.

BACKGROUND

Claimant suffered a work injury to his left knee on September 2, 2003, when he was doing ground duty as a transtainer (crane) operator and twisted his leg after stepping into a crevice between concrete and a railing. Tr at 24-25. Claimant continued to work as a crane operator while he sought treatment from Dr. Wardell. Tr at 25-26. Claimant did not leave work until he underwent ACL reconstructive surgery on March 23, 2004. Tr at 26. Claimant's injury was accepted by Employer as compensable and medical treatment was paid. Claimant was out of work from March 23, 2004 until August 3, 2005, at which time Dr. Wardell returned him as a crane operator, the same job he held prior. Tr at 26-27. Claimant was paid temporary total disability for the time he was out of work.

When Claimant returned to being a crane operator on August 3, 2005, he was limited by Dr. Wardell to working a maximum 8-hour shift. CX 19 at 4; EX 2 at 1. Hence, Claimant is seeking temporary partial disability benefits to offset the loss in wages he incurred from not being able to work any overtime. Claimant worked as a crane operator until April 10, 2006, when the employer pulled him from the job. Tr at 30. The reason given for pulling Claimant was the insurance company said it was not safe for Claimant to continue working as a crane operator. *Id*. Claimant has been out of work since that time, with the minor exception of a day-and-a-half's work, in May 2006, in a reacher position, a job he could not perform with his injured left knee. Tr at 31.

Claimant's back commenced hurting two months prior to his returning to work post ACL reconstruction, approximately June 2005. Tr at 31-32. Claimant's doctors' opine the back pain is causally related to the left knee injury. Accordingly, Claimant is seeking temporary total disability from the time he was pulled from the crane operator position, April 11, 2006, through

the present and continuing. Employer's doctors' opine the Claimant's back pain is not related to the left knee injury, and hence, is not a compensable injury.

SUMMARY OF THE EVIDENCE

Claimant's Testimony

Claimant has been a member of the International Longshoremen's Association for almost twelve years. Tr at 22. His last job was as a transtainer operator, a job that requires 4 hours up in the cab, then four hours on the ground. Tr at 22-24. It is approximately 100 feet up a vertical ladder to enter the cab. Tr at 22. The ladder is broken into three sections so Claimant was able to rest as he ascended into the cab. Tr at 27. Claimant felt that the ladder being broken into 3 sections was the reason Dr. Wardell agreed to let him return to his job as a crane operator.[2] *Id*. Once Claimant ascends into the cab, all the work is done from a comfortable seated position looking down and controlling everything with his arms, his lower extremities were not used to control the crane. Tr at 23, 31. Each transtainer job is usually shared by two people; you work in four-hour shifts, either as the operator in the cab, or on the ground shift as the eyes for the operator. Hence, in an eight-hour shift, its four hours in the cab, then four hours on the ground. Tr at 23-24.

On September 2, 2003, when working as the groundman Claimant stepped into a crack between a rail and poured concrete and twisted his leg, feeling a pop in his knee. Tr at 24-25. He shortly thereafter began treatment with Dr. Wardell, but kept up his regular hours, including overtime, as a crane operator. Tr at 25-26. Claimant continued working until the day of the ACL reconstruction surgery by Dr. Wardell, March 23, 2004. After the surgery Claimant entered physical rehab. Tr at 26. Claimant stated his rehab quit progressing after a few months, and his knee was actually getting worse. *Id*. In the summer of 2005 Claimant went to Dr. Wardell and persuaded him to loosen the restrictions, thus allowing him to return to work.[3] Claimant was out of work until August 3, 2005, when he returned as a crane operator. Tr at 28.

Prior to returning on August 3, 2005, Claimant, at the Employer's request, had to see a Dr. Web at Nowcare, to be physically cleared to return to work as a crane operator. *Id*. Dr. Web cleared Claimant to return to his job. *Id*. Claimant saw Dr. Cohn, also at the Employer's request, on August 2, 2005, the day before he was to return to work. Tr at 29. Dr. Cohn knew he was returning to work the next day as a transtainer operator and expressed no concerns. Claimant maintains that other than the normal aches and pains he had no problems upon his return to work on August 3, 2005. Claimant would still be working as a transtainer operator today if the Employer had not pulled him from the job. Tr at 34-35.

Dr. Arthur Wardell

Dr. Arthur Wardell is a board-certified orthopedic surgeon. Dr. Wardell has treated Claimant since shortly after the time of his September 2, 2003 work-related injury. Following

[2] The terms "transtainer operator" and "crane operator" are used interchangeably throughout.
[3] Once Dr. Wardell cleared him to climb the ladder once a day and work an eight-hour shift he was returned to his job.

Claimant's March 23, 2004, ACL reconstruction surgery, Dr. Wardell kept him on out-of-work status until October 7, 2004, when he released him for light duty, with restrictions. CX 19 at 9. On May 20, 2005, Dr. Wardell released Claimant to regular-duty work for four hours per day, CX 19 at 5, and then on July 1, 2005, released him to regular-duty work for a full eight-hour day.[4] CX 19 at 4.

Dr. Wardell first made reference to Claimant's back injury on September 1, 2005, noting, "[t]he back has midline lumbar tenderness and right paralumbar tenderness. There is bilateral sacroiliac joint tenderness. There is full motion of the back with pain on extension. He has developed a lumbar strain compensating for his abnormal gait." CX 19 at 4. On December 12, 2005, Dr. Wardell again writes that he thinks Claimants back pain is a result of his knee injury. CX 19 at 3. In deposition testimony Dr. Wardell opines that Claimant's back problems stem from his altered gait. CX 20 at 13-14. When describing the etiology of Claimant's back pain, Dr. Wardell described the irritation at Claimant's S1 nerve, and a disc bulge at L4-5; stating that, "the L4-5 disc bulge would come into contact with the S1 nerve in the midline area, especially if there were altered mechanics in the gait." *Id*.

Dr. Wardell acknowledges that it was Dr. Crawford who made him aware of Claimant's one centimeter leg length discrepancy, and opined that the leg length difference could be contributing to the back pain. CX 20 at 11-12. In Dr. Wardell's deposition he cited to Dr. Crawford's opinion that Claimant's leg length discrepancy was secondary to the arthritis in Claimant's left knee, which stemmed from the work injury. CX 20 at 12.

Dr. Sheldon Cohn

Dr. Sheldon Cohn is a board-certified orthopedic surgeon. Dr. Cohn performed two separate medical evaluations of Claimant, the first on August 2, 2005, and the second on May 23, 2006. Dr. Cohn performed a physical examination of the Claimant and reviewed his past medical records, tests and x-rays. Dr. Cohn determined that neither Claimant's right knee pain, nor his back pain was related to his September 2, 2003, work injury. EX 3 at 8. Additionally, Dr. Cohn reviewed video surveillance tapes of the Claimant walking and opined that, "[to] a degree of medical certainty, there does not appear to be a significant gait abnormality which would be responsible for any other sort of musculoskeletal problems." EX 3 at 10.

Dr. David Goss

Dr. David Goss is a board-certified orthopedic surgeon. Dr. Goss performed a medical evaluation of Claimant on December 22, 2005, in which he took a history, reviewed past medical records and performed a physical exam of Claimant. When considering the impact of Claimant's September 2, 2003, work injury and his subsequent altered gait on his back pain, Dr. Goss wrote, "I do not believe that [Claimant's] current complaints of low back pain are in any way related to his work related injury. I do not believe his complaints of low back pain are in any way related to his subsequent knee surgery and chronic lower extremity limp." EX 5 at 1. Additionally,

[4] Claimant stayed capped at the eight-hour shift until he was pulled from his crane operator job by the Employer on April 10, 2006.

Dr. Goss reviewed surveillance tape of Claimant walking and opined, to a reasonable degree of medical certainty, that Claimant's gait abnormality was "very, very mild" and should not be causing any other musculoskeletal problems whatsoever. EX 5 at 10.

Dr. Lisa Barr

Dr. Lisa Barr is board certified in physical medicine and rehabilitation. Dr. Barr did not see the Claimant but did a peer review of Claimant's medical condition and prior treatments. Dr. Barr in her evaluation opines that much of Claimant's present left knee problems stem from a knee injury that predates Claimant's work injury of September 2, 2003. EX 13 at 1. Dr. Barr opined that there was no evidence of low back injury. EX 13 at 3. Dr. Barr further opined that she found Claimant's altered gait to not be "significant" enough to be causing any back pain. *Id*. Additionally, Dr. Barr reviewed surveillance tape of Claimant walking and stated, "[i]n my opinion and to a reasonable degree of medical certainty I did not observe any significant or consistent gait alterations that would result in other problems such as back or hip pain." EX 13 at 5.

Isabella Harwell

Ms. Isabella Harwell is a registered nurse and medical case manager at General Management Solutions who was in charge of monitoring the Claimant in his medical progress and attempting to return him to work. CX 1 at 4-7. Ms. Harwell was hired by Employer's insurance carrier. CX 1 at 7. At deposition when asked what Dr. Goss said about the Claimant's back condition, she answered:

> A: Doctor Goss did not think that his work-related injury in September 2003 was the cause of his back injury, that maybe it was his altered gait and with some physical therapy it would resolve, but in no way was it related to his workers' comp injury.
>
> Q: But he did feel it was related to the altered gait; is that correct?
>
> A: I can't be affirmative on that because I can't remember exactly what he said in the note, so I can't say a hundred percent.
>
> Q: I want to show you your note, and this is a medical progress report dated December 23, 2005,[CX 13 at 19] and see if that refreshes your memory?
>
> A: Yes. I didn't want to say affirmative if it wasn't affirmative because I reviewed his record yesterday.
>
> Q: So he did tell you it was due to the altered gait?
>
> A: Yes.

Q: And when we say altered gait, we are talking about the limping because of the knee injury?

A: Yes, yes, because of the left knee injury.

CX 1 at 8,9.

Burton Lynn

Mr. Burton Lynn is an insurance adjuster for Abercrombie, Simmons and Gillette, the Employer's insurance carrier, and is the adjuster assigned to the Claimant's case since the time of the original work-place injury in September 2003. CX 2 at 4-5. When discussing the independent medical examination (IME) that Dr. Goss provided to the Claimant Mr. Lynn stated that Dr. Goss was strictly to find out what was wrong with Claimant's back. CX 2 at 22. In that vein he further stated "…I believe Dr. Goss said it was an abnormal gait, the same thing as Dr. Wardell." *Id*. Later in the deposition Mr. Lynn was asked:

Q: Between – Between December of 2005 and May of 2006, did you authorize medical treatment for the back?

A: For a strain – yes.

Q: You did?

A: I mean I paid for the strain, a strain to his back.

Q. Do you agree between December of 2005 and May of 2006 that his back strain was related to his work injury?

A: Abnormal gait. It was sent in Dr. Goss's reports. And Doctor Goss stated that it would be over shortly after a course of physical therapy, and that's the same thing that happened to him when he was receiving therapy prior to being released in May. His gait was normal.

CX 2 at 23-24.

Dr. Andrea Crawford

Dr. Andrea Crawford is a board-certified orthopedic surgeon. Dr. Crawford performed a medical evaluation, at the request of the Department of Labor (DOL), to help reconcile two disparate disability ratings on the Claimant. CX 4 at 3. Dr. Crawford performed a physical exam of Claimant and reviewed his past medical history, prior x-rays, and in addition, new x-rays were taken and reviewed. CX 4 at 3-5. Dr. Crawford designated a lower extremity disability rating of 52%, which the DOL accepted as well reasoned and felt her evaluation to be "fair and appropriate." CX 4 at 1. In addition, Dr. Crawford opined that a 1cm shoe lift in his left shoe would help alleviate the Claimant's back pain, which she thought is "perhaps

secondary" to his leg length discrepancy. CX 4 at 5. She further opined the leg length discrepancy is probably due to the loss of medial joint space and increased varus of the knee; both of which stem from Claimant's work injury. CX 4 at 3-5.

DISCUSSION

Claimant seeks temporary partial disability benefits from August 3, 2005 to April 10, 2006; basing this claim on his partial loss of wages because he was no longer permitted to work overtime. Additionally, Claimant seeks to have his back injury be considered a compensable consequence of his work-related left-knee injury and as such be awarded temporary total disability benefits from April 11, 2006, to the present and continuing. After a complete review of the entire record in light of the arguments of the parties, applicable statutory provisions, regulations, and precedent, I hold that pursuant to the *PEPCO* doctrine Claimant is not entitled to temporary partial disability benefits for his loss of wage earning capacity. Additionally, I hold that pursuant to the 20(a) presumption analysis, Claimant's back injury is a compensable consequence of his left knee injury and as such entitles him to temporary total disability from April 11, 2006, to the present and continuing.

Temporary Partial Disability

In *Potomac Electric Power Co. v. Director, OWCP* [*PEPCO*], 449 U.S. 268 (1980), the Supreme Court was asked to decide if a permanently-partially disabled employee, whose injury was of a kind specifically identified in the schedule provided by the LHWCA, could elect to receive a larger recovery under another section of the Act. The Supreme Court held that Employee's recovery was limited to the statutory schedule. *Id*. at 274-75. The pertinent part of the Act reads:

> Permanent partial disability: In case of disability partial in character but permanent in quality the compensation *shall* be 66 2/3 per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section, and shall be paid to the employee as follows: …

33 U.S.C. 908(c)(emphasis added). What follows in 908(c) is the list of scheduled injuries, which includes "Leg lost, two hundred and eighty-eight weeks' compensation." 33 U.S.C. 908(c)(2). The list of scheduled injuries runs from one to twenty, and then twenty-one states, "(21) Other cases: In all other cases in the class of disability, the compensation shall be 66 2/3 per centum of the difference between the average weekly wages of the employee and the employee's wage earning capacity thereafter…" 33 U.S.C. 908(c)(21).

The PEPCO court framed the issue as such:

> It is also noteworthy that the statutory direction that precedes the schedule of specifically described partial disabilities mandates that the compensation described by the schedule "*shall* be paid to the employee, as follows." We are not

> free to read this language as though it granted the employee an election. Nor are we free to read the subsequent words "all *other* cases" as though the described "all of the foregoing" as well; the use of the word "other" forecloses that reading.

PEPCO, 449 U.S. at 274(emphasis in original). Just as in *PEPCO* where the Supreme Court determined the above statutory language precluded the employee from being granted an election of which disability award to be granted, here the claimant is also precluded from taking an election of awards. The Claimant has been granted and paid a scheduled award per 33 U.S.C. 908(c), and as such is not entitled to any additional compensation for temporary partial disability, i.e., Claimant cannot make an election of which disability award to be granted.

Temporary Total Disability

Section 20(a) provides a claimant with a presumption that his condition is causally related to his employment if he establishes a *prima facie* case by proving that he suffered a harm and that employment conditions existed or a work accident occurred which could have caused, aggravated, or accelerated the condition. *See U.S. Industries/Federal Sheet Metal v. Director, OWCP* (*Riley*), 455 U.S. 608, 14 BRBS 631, 633 (1982), *rev'g Riley v. U.S. Industries/Federal Sheet Metal*, 627 F.2d 455, 12 BRBS 237 (D.C. Cir. 1980). A claimant's subjective complaints of symptoms and pain can be sufficient to establish the elements of physical harm if such complaints are found credible. *Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981). If the claimant invokes the presumption, the burden shifts to the employer to rebut the presumption with substantial countervailing evidence. *Swinton v. J. Frank Kelly Inc.*, 554 F.2d 1075, 1082, 4BRBS 466, 475 (D.C. Cir), *cert. denied*, 429 U.S. 820 (1976). Once the presumption is rebutted, it falls out and the administrative law judge must weigh all the evidence and render a decision that is supported by substantial evidence.

Claimant has testified that he had back pain subsequent to his work-related injury of September 2, 2003. Tr at 31-32. Claimant's testimony as to his back pain is buttressed by separate medical opinions, including both Claimant's treating physician as well as doctors the Employer and Claimant consulted for medical evaluations. *See* CX 4; CX 19; CX 20; EX 5; EX 13. An injury need not be traceable to a definite time, but can occur gradually over a period of time. *See Pittman v. Jeffboat, Inc.*, 18 BRBS 212 (1986); *Gardner v. Bath Iron Works Corp.*, 11 BRBS 556 (1979), *aff'd sub nom. Gardner v. Director, OWCP*, 640 F.2d 1385, 13 BRBS 101 (1st Cir. 1981). Hence, I find that Claimant invoked the presumption because he suffered a harm (a back injury) and that a work accident (the injury of September 2, 2003) occurred which could have caused the harm.

In this case, the Employer has met their burden to come forward with substantial countervailing evidence to rebut the presumption that Claimant's injury was caused by his employment. *See generally* EX 3 (Dr. Cohn opined that neither the back injury or right knee pain was related to Claimant's September 2, 2003 work injury); EX 5 (Dr. Goss opined that Claimant's back injury is in no way related to his work related injury); EX 13 (Dr. Barr opined that Claimant's altered gait is not significant enough to be causing any back pain).

Once the Section 20(a) presumption is rebutted, it falls out of the case and the judge must then weigh all the evidence and resolve the case based on the record as a whole. *Swinton*, 554 F.2d 1075, 4 BRBS 466; *Hislop v. Marine Terminals Corp.,* 14 BRBS 927 (1982). This rule is an application of the "bursting bubble" theory of evidentiary presumptions, derived from the Supreme Court's interpretation of Section 20(d) in *Del Vecchio v. Bowers*, 296 U.S. 280 (1935). *See Brennan v. Bethlehem Steel Corp.*, 7 BRBS 947 (1978) (applying *Del Vecchio* to Section 20(a)).

Accordingly, in this case, the Section 20(a) presumption falls out and I will now weigh the evidence as a whole. I found the Claimant's testimony to be credible and benefited from viewing his demeanor at the hearing. Claimant testified that his back first started hurting after the surgery in March 2004 and prior to his returning to work in August 2005. Tr at 31-32. Claimant first reported the back pain to his treating physician on September 1, 2005. Tr at 32; CX 19 at 4. Claimant went into detail describing his limp and what made it better or worse. Tr at 33.

Employer argues that Drs. Cohn, Goss and Barr have provided more than enough evidence to preclude Claimant from proving by a preponderance of the evidence that his back injury is a compensable consequence of his work-related injury. I disagree. Dr. Wardell is Claimant's treating physician and has the benefit of having seen him from shortly after the accident to present, at regular intervals. Dr. Wardell has taken a detailed history of the Claimant and has had the opportunity to speak to him at length as he has described his back pain over many months. Dr. Wardell has benefited from the continuity of treatment he has provided Claimant. Dr. Wardell has consistently noted that Claimant's back injury stems from his altered gait, which stems from his work related injury. I find Dr. Wardell's deposition testimony to be well reasoned and credible, and as such assign his opinion greater weight.

Further bolstering Dr. Wardell's prognosis of Claimant's back injury etiology is Dr. Crawford who performed a complete workup on the Claimant and thought his back pain could be secondary to his length discrepancy. Dr. Crawford suggested that the leg length discrepancy stemmed from Claimant's work related injury. Additionally, Dr. Crawford opined that correcting Claimant's leg length discrepancy with a 1 cm shoe lift would help alleviate the back pain.

When weighing the evidence as a whole, Dr. Goss's opinion that Claimant's back injury is not related to his work injury is weakened by both Ms. Harwell and Mr. Lynn's notes and testimony that Dr. Goss had attributed Claimant's back injury to his altered gait. No one maintains that Claimant does not have a limp, at most the parties have argued as to the severity of the limp. Furthermore, it seems counter-intuitive to suggest that a person's unremitting limp could have no impact on other body systems. As such, I am assigning less weight, in particular to Dr. Goss's opinion, but also to Dr. Cohn and Dr. Barr's opinions. *See Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Ennis v. O'Hearne*, 223 F.2d 755 (4th Cir. 1955) (a judge is not bound to accept the opinion of a physician if rational inferences cause a contrary conclusion).

Accordingly, I find the treatment records, deposition testimony and medical opinion of Dr. Wardell, Claimant's treating physician, and the supporting medical opinion of Dr. Crawford to outweigh the opinions of Drs. Cohn, Goss and Barr.

CONCLUSION

I have determined, for all the aforementioned reasons, that Claimant is not entitled to temporary partial disability benefits from August 3, 2005 to April 10, 2006. Additionally, Claimant has proven by a preponderance of the evidence that his back injury is a compensable consequence of his left knee injury, and as such, entitling Claimant to an award of temporary total disability benefits from April 11, 2006, to the present and continuing.

ORDER

It is hereby **ORDERED** that:

1. Claimant's request for temporary partial disability payments for the time period of August 3, 2005 to April 10, 2006, is DENIED.

2. Claimant's request for temporary total disability benefits from April 11, 2006, through the present and continuing is GRANTED.

3. Claimant is entitled to an award of temporary total disability compensation in the amount of $996.54 per week beginning April 11, 2006, through the present and continuing.[5]

4. Employer is responsible for medical treatment for Claimant's work injuries in accordance with Section 7 of the Act.

5. Claimant is entitled to, and has already been paid, temporary total disability benefits in full while he was out of work post-surgery from March 23, 2004 to August 2, 2005.

6. Interest at the rate specified in 28 U.S.C.§ 1961 in effect when this Decision and Order is filed with the Office of the District Director shall be paid on all accrued benefits and penalties, computed from the date each payment was originally due to be paid. *See Grant v. Portland Stevedoring Co.*, 16 BRBS 267 (1984).

7. All computations are subject to verification by the District Director.

[5] $1,764.02 (Claimant's AWW at time of September 2, 2003, injury) X 66 2/3 per centum = $996.54

8. Claimant's attorney, within 20 days of receipt of this order, shall submit a fully documented fee application, a copy of which shall be sent to opposing counsel, who shall then have ten (10) days to respond with objections thereto.

A

Kenneth A. Krantz
Administrative Law Judge

KAK/tls